

# Notice of Allowability

Application No.

10/026,139

Examiner

Manjunath N. Rao, Ph.D.

Applicant(s)

KUMAR, MANOJ

Art Unit

1652

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the amendment filed on 5-10-04.
2. ☒ The allowed claim(s) is/are 40,42-46,48,49 and 52.
3. ☒ The drawings filed on 18 December 2001 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

Manjunath N. Rao, Ph.D.  
Primary Examiner  
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### **DETAILED ACTION**

Claims 40-53 are currently pending in this application. Applicants' amendments and arguments filed on 5-10-04, have been fully considered and are deemed to be persuasive to overcome the rejections previously applied. Rejections and/or objections not reiterated from previous office actions are hereby withdrawn. Specifically, Examiner has withdrawn the previous rejections under 35 U.S.C. 112, 2<sup>nd</sup> paragraph and under 35 U.S.C. 103(a) in view of claim amendments and arguments presented by the applicant. It is also noted that new claims 50 and 53 are directed to a different invention and will be subject to restriction if not canceled by the applicant.

### **EXAMINER'S AMENDMENT**

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Ms Lynn Marcus-Wyner on 7-15-04.

The application has been amended as follows:

- A) Please cancel claims 41, 47, 50, 51, and 53 without any prejudice.
- B) In claim 40 line 3, delete the word "yeast" and replace it with the following phrase "member of the imperfect yeast group".

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C) In claim 40, line 4, insert the phrase "as a sole carbon source" after the word "stereoisomer".

D) In claim 40, line 5, delete the phrase "culturing said yeast in the presence of" and replace it with "growing the selected yeast on".

E) In claim 40, line 5, insert the phrase "as a sole carbon source" after "(KLG)".

F) In claim 49, line 3, insert the word "an" after the word "selecting".

G) In claim 49, line 3, insert the phrase "from the imperfect yeast group" after the word "yeast".

*Allowable subject matter*

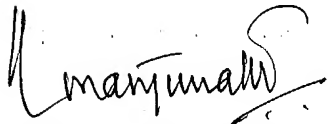
Claims 40, 42-46, 48-49, 52 are allowed.

Following a diligent search it was determined that the prior art neither teaches nor suggests a method of screening an yeast capable of producing ascorbic acid based on its capacity to utilize 2-keto-gulonic acid as a sole carbon source as claimed in claims 40, 42-46, 48-49, 52. Examiner has withdrawn the previous obviousness rejection in view of applicant's argument that none of the references taken either alone or in combination teach or suggest the method of screening yeasts for ascorbic production based on their capacity to utilize 2-KLG as a sole carbon source.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manjunath N. Rao, Ph.D. whose telephone number is 571-272-0939. The examiner can normally be reached on 7.00 a.m. to 3.30 p.m. If attempts to reach the examiner by telephone are unsuccessful, the Examiner's supervisor, Ponnathapura Achutamurthy can be reached on 571-272-0928. The fax phone numbers for the organization

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where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-1600.

A handwritten signature in black ink, appearing to read "Manjunath N. Rao". The signature is stylized with a large initial "M" and a long horizontal stroke extending to the right.

Manjunath N. Rao Ph.D.  
Patent Examiner, A.U. 1652  
7/19/04